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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

ULISES CHAVEZ,

Defendant and Appellant.

F061584

(Super. Ct. No. VCF200635)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Tulare County. James W. Hollman, Judge.

Candace Hale, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Stephen G. Herndon and Carlos A. Martinez, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Wiseman, Acting P.J., Gomes, J. and Franson, J.

A jury convicted appellant, Ulises Chavez, of multiple felonies, including assault with a firearm on a peace officer (Pen. Code, § 245, subd. (d)(1))¹, as charged in count 5 of the second amended information, and found true multiple enhancement allegations. In addition, appellant pled guilty to another felony count and admitted a single enhancement allegation in connection with that count. The court imposed a prison term of 28 years 8 months. The sentence included 20 years for an enhancement imposed under former section 12022.53, subdivision (c)² in connection with the count 5 offense.

Appellant's sole contention on appeal is that the count 5, section 12022.53(c), enhancement was not pled, and therefore imposition of sentence on that enhancement violated his right to notice of charges against him under the Sixth and Fourteenth Amendments to the United States Constitution. We affirm.

DISCUSSION

Under section 12022.53, a person convicted of any of the offenses listed in section 12022.53(a) shall be punished with an additional and consecutive term, as follows: 10 years, where the defendant personally uses a firearm (§ 12022.53(b)); 20 years, where he or she personally and intentionally discharges a firearm (§ 12022.53(c)); and 25 years, where he or she personally and intentionally discharges a firearm and proximately causes death or great bodily injury to a person other than an accomplice (§ 12022.53(d)). The count 5 offense, assault with a firearm on a peace officer in violation of section 245, subdivision (d), is one of the listed offenses. (§ 12022.53(a)(7)). Here, as indicated above, the jury found that appellant was subject to the section 12022.53(c) enhancement

¹ All statutory references are to the Penal Code.

² Section 12022.53 was repealed effective January 1, 2012 (Stats. 2010, ch. 711, § 4), but was in effect at all times relevant here. For the sake of brevity, we dispense with the designation of “former” in further references to the statute and we refer to the subdivisions of section 12022.53 and component parts in abbreviated fashion, i.e., as sections 12022.53(a), 12022.53(a)(7), 12022.53(b), etc.

in connection with the count 5 offense, and the court imposed the prescribed 20-year term.

Appellant argues that the second amended information alleges a 10-year section 12022.53(b) enhancement, but does not allege the more serious section 12022.53(c) enhancement. He bases this claim, apparently, on the following paragraph in the second amended information under the Count 5 heading, which makes no mention of section 12022.53(c): “It is further alleged that the DEFENDANT used a firearm within the meaning of Penal Code Sections 12022.53(b) and 12022.5(a) and (d).”

Appellant overlooks that following this allegation and another special allegation, on the next page but also under the Count 5 heading, it is alleged that “as to the above count(s)” appellant “personally and intentionally discharged a firearm, a ... HANDGUN, within the meaning of Penal Code section 12022.53(c).” Thus, the Count 5 section 12022.53(c) enhancement was properly pled. Appellant’s contention to the contrary is without merit.

DISPOSITION

The judgment is affirmed.